Chin Nyuk Min v Mystique Bay Sdn Bhd

HIGH COURT (KOTA KINABALU) — NO K22–73 OF 2010-III
DAVID WONG J
19 APRIL 2012

Bankruptcy — Capacity of bankrupt — Sale of land by undischarged bankrupt — Whether defendant was entitled to charge interest on plaintiff's housing loan during his bankruptcy period — Whether plaintiff estopped from disputing redemption amount — Whether estoppel should prevail against statute — Whether plaintiff entitled to refund of alleged overpayment of redemption sum — Bankruptcy Act 1967 s 8(2A)

Chin Nyuk Min ('the plaintiff') had a housing loan with Standard Chartered Bank ('SCB') for the sum of RM120,000, which was secured by a charge of his property in Kota Kinabalu ('the property'). On 5 August 1999 the plaintiff was adjudged a bankrupt. The plaintiff then received a redemption statement from SCB, which required him to settle the redemption amount of RM160,623.11 on or before 8 December 2006. Upon receipt of the redemption statement, the plaintiff decided to sell the property and was successful in finding a ready purchaser. In order to complete the sale of the property, the plaintiff applied for his discharge of bankruptcy. On 3 July 2007, the court granted the plaintiff a discharge of bankruptcy. SCB then informed the plaintiff that the redemption amount was now RM238,290.25 and that the due date for payment was 29 October 2007. The plaintiff requested SCB to waive the interests charged during the bankruptcy period but the defendant, which had acquired the banking facility from SCB, refused to accede to the request. The defendant then proceeded to fix the property for sale by auction to recover the redemption amount. However, the defendant did not proceed with the auction sale because the parties had allegedly reached a settlement, by which in consideration of the defendant agreeing to postpone the auction, the plaintiff undertook to pay the redemption sum of RM245,000 in full to the defendant. After duly paying the redemption sum of RM245,000, the plaintiff filed the present claim for a declaration that the redemption sum he paid was invalid on the grounds that the amount was levied without any basis, legal or otherwise. The plaintiff also sought a refund of the overpaid redemption amount, which he requested the court to reassess. The defendant submitted that the plaintiff was estopped from disputing the redemption amount, which he had already paid. The defendant contended that since the plaintiff had not disputed the contents or quantum of the redemption amount when the same was issued, he was bound by it. It also argued that it would be unfair for the plaintiff to renege from an 'amicable settlement' in which he had obtained a benefit. The plaintiff submitted that

estoppel was not applicable in this case and that the defendant was not entitled to charge interests on the plaintiff's housing loan during his bankruptcy period in view of s 8(2A) of the Bankruptcy Act 1967 ('the Act').

Held, allowing the plaintiff's claim for a refund with costs of RM5,000:

(1) There was little doubt that s 8(2A) of the Act was introduced as a social piece of legislation premised on the public policy of protecting people in bankruptcy, while estoppel was a principle of justice and of equity. Estoppel could not prevail against a statute especially when s 8(2A) of the Act was introduced to protect people in bankruptcy. As such, the defendant was barred from charging interests during the bankruptcy period (see para 20).

(2) As s 8(2A) of the Act merely prohibited the charging of interest, administration fees incurred by the defendant for keeping the account of the loan could be charged. Thus, the defendant was entitled to charge for the administration fees and the plaintiff was to be refunded the interest debit of RM54,646.41 and the late charge debit of RM57,951.41 (see para 21).

(3) The defendant's submission that by disputing the redemption amount the plaintiff was responsible for the delay, could not hold. The plaintiff was fully entitled to dispute the redemption amount as that was his right. As such, adopting the timeline of 90 days the defendant ought to refund to the plaintiff the late interest of RM3,582.88 and late payment charges of RM22,927.69 (see para 24).

(4) The only reason why this matter was before this court was because the plaintiff sought for a declaration. In fact, the plaintiff should have sought for a refund of the overpayment of the redemption amount by virtue of s 8(2A) of the Act in the sessions court, which was fully competent to interpret and apply the said section (see para 27).

[Bahasa Malaysia summary

Chin Nyuk Min ('plaintif') memperolehi pinjaman perumahan daripada Standard Chartered Bank ('SCB') untuk sejumlah RM120,000, yang mana dijamin oleh caj terhadap haratanahnya di Kota Kinabalu ('hartanah'). Pada 5 Ogos 1999 plaintif telah diputuskan sebagi bankrap. Plaintif kemudiannya menerima penyata penebusan daripada SCB, yang mengkehendakki dia untuk menyelesaikan jumlah penebusan sejumlah RM160,623.11 pada atau sebelum 8 Disember 2006. Selepas menerima penyata penebusan, plaintif memutuskan untuk menjual hartanah dan berjaya dalam mendapatkan pembeli yang sedia. Supaya dapat menyelesaikan jualan hartanah, plaintif memohon untuk pelepasan kebankrapan. SCB kemudiannya memberitahu plaintif bahawa jumlah penebusan tersebut sekarang adalah RM238,290.25 dan bahawa tarikh kena bayar adalah 29 Oktober 2007. Plaintif memohon SCB untuk

mengetepikan faedah yang dikenakan semasa tempoh kebankrapan tersebut tetapi defendan, yang mendapat kemudahan perbankan daripada SCB, menolak daripada akur kepada permohonan tersebut. Defendan kemudiannya meneruskan untuk menetapkan hartatanah tersebut untuk jualan melalui lelongan untuk mendapatkan semula jumlah penebusan. Defendan, walau bagaimanapun tidak meneruskan dengan jualan lelong kerana pihak-pihak telah mencapai penyelesaian, di mana mempertimbangkan persetujuan defendan untuk menangguhkan lelongan tersebut, plaintif mengaku untuk membayar jumlah penebusan penuh sebanyak RM245,000 kepada defendan. Selepas membayar jumlah penebusan sebanyak RM245,000, plaintif memfailkan tuntutan ini untuk perisytiharan bahawa jumlah penebusan yang dibayarnya adalah tidak sah atas alasan bahawa jumlah tersebut dilevikan tanpa apa-apa asas, undang-undang atau sebaliknya. Plaintif juga memohon pembayaran balik jumlah penebusan yang dibayar terlebih, yang mana dia memohon mahkamah untuk menaksir semula. Defendan berhujah bahawa plaintif diestop daripada mempertikaikan jumlah penebusan tersebut, yang mana telah dibayarnya. Defendan berhujah bahawa memandangkan plaintif tidak mempertikaikan kandungan atau kuantum jumlah penebusan apabila ianya dikeluarkan, dia terikat dengannya. Ia juga dihujahkan bahawa akan menjadi tidak adil untuk plaintif memungkiri daripada 'amicable settlement' yang mana dia telah memperolehi faedah. Plaintif berhujah bahawa estopel tidak beraplikasi di dalam kes ini dan bahawa defendan tidak berhak kepada faedah caj ke atas pinjaman perumahan plaintif semasa tempoh kebankrapannya berikutan s 8(2A) Akta Kebankrapan 1967 ('Akta').

Diputuskan, membenarkan tuntutan plaintif untuk mendapat bayaran balik dengan kos RM5,000:

(1) Tidak terdapat keraguan bahawa s 8(2A) Akta diperkenalkan sebagai satu perundangan berdasarkan atas polisi awam melindungi orang ramai dalam kebankrapan, sementara estopel adalah prinsip keadilan dan berekuiti. Estopel tidak dapat mengatasi statut terutamanya apabila s 8(2A) Akta diperkenalkan untuk melindungi orang ramai dalam kebankrapan. Oleh itu, defendan dihalang daripada mencaj faedah semasa tempoh kebankrapan (lihat perenggan 20).

(2) Memandangkan s 8(2A) Akta hanya melarang mencaj faedah, fi pentadbiran yang perlu dibayar oleh defendan untuk mengendalikan akaun pinjaman boleh dicaj. Oleh itu, defendan berhak untuk mencaj fi pentadbiran dan plaintif dibayar balik debit faedah sejumlah RM54,646.41 dan caj debit lewat sejumlah RM57,951.41 (lihat perenggan 21).

(3) Hujahan defendan bahawa dengan mempertikaikan jumlah penebusan tersebut plaintif bertanggungjawab untuk kelewatan, tidak dapat dikekalkan. Plaintif berhak sepenuhnya untuk mempertikaikan jumlah

penebusan kerana ia adalah haknya. Oleh itu, menggunapakai garis masa 90 hari defendan patut membayar balik kepada plaintif faedah lewat sejumlah RM3,582.88 dan caj bayaran lewat sejumlah RM22,927.69 (lihat perenggan 24).

(4) Satu-satunya alasan mengapa perkara ini adalah di hadapan mahkamah adalah kerana plaintif memohon untuk perisytiharan. Sebenarnya, plaintif patut memohon bayaran balik bayaran berlebihan jumlah penebusan tersebut berikutan s 8(2A) Akta di mahkamah sesyen, yang mana berkompeten untuk mentafsir dan menggunapakai seksyen tersebut (lihat perenggan 27).]

Notes

For cases on sale of land by undischarged bankrupt, see 1(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2755–2756.

Cases referred to

Allen v Thorn Electrical Industries Ltd; Griffin v Metropolitan Police District Receiver [1968] 1 QB 487, CA (refd)

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331; [1995] 4 CLJ 283, FC (refd)

Chong Kon Yon v MBf Finance Bhd [1997] 2 MLJ 333; [1997] 1 CLJ 7, CA (refd)

Ong & Co Pte Ltd v Foo Sae Heng [1990] 2 MLJ 85, HC (refd)

United Overseas Bank (M) Sdn Bhd v Mok Hue Huan & Anor [2010] 7 MLJ 293, HC (folld)

Legislation referred to

Bankruptcy Act 1967 s 8(2A)

Kevin Wong (Gayle Jokinin with him) (Shelley Yap) for the plaintiff.
Saiful Mokhtar (Jayasuriya Kah & Co) for the defendant.

David Wong J:

PROCEEDINGS

[1] The plaintiff's claim is for a declaration that the redemption sum of RM245,000 is invalid on the ground that the amount is levied without any basis, legal or otherwise. As a consequent relief, the plaintiff is also asking the court for the redemption amount be reassessed and the balance overpaid be refunded to the plaintiff.

[2] The defendant disputes such contention on the ground that the plaintiff had never disputed the discounted redemption sum of RM245,000 when he

made the payment to the defendant on 6 May 2009. Hence, he is estopped from disputing the redemption amount.

BACKGROUND

[3] The plaintiff in February 1996 had a housing loan with Standard Chartered Bank ('SCB') for the sum of RM120,000 and the security of that loan was his property held under country lease 215332577 known as Lot 38, Taman Sindo, Jalan Penampang, Kota Kinabalu ('property'). The plaintiff was adjudged a bankrupt on 5 August 1999 due to debts owed in his capacity as guarantors of certain loans. The plaintiff's bankruptcy was discharged on 3 July 2007.

[4] Thereafter, the plaintiff received the first redemption statement dated 30 November 2006 from SCB which states the redemption amount to be RM160,623.11 payable on or before 8 December 2006. Upon receipt of that letter, the plaintiff put up the property for sale and was successful in finding a buyer in 2007 resulting in a sale and purchase agreement dated 4 January 2007 signed between the plaintiff and one Chua Hui Yong (purchaser) for sale of the property. The purchaser obtained a loan of RM180,000 from Public Bank Bhd to finance his purchase. The loan documentations were processed by the law firm of Messrs Shelley Yap. For the sale of property to be completed, the plaintiff had to and did apply for his discharge of bankruptcy and was granted by the court on 3 July 2007. However, vide the letter dated 20 August 2007 (exh B p 27), SCB informed the plaintiff that the redemption amount for his loan is now RM236,264 to be paid by 15 September 2007. SCB also by a letter dated 2 October 2007(exh B p 29) informed the plaintiff that the redemption amount is now RM238,290.25 and the due date for payment was on 29 October 2007.

[5] The plaintiff's solicitor, Messrs Shelley Yap by a letter dated 29 August 2007 (exh B, p 28) wrote to SCB requesting that interests charged during the bankruptcy period be waived. SCB through their solicitors, Messrs Jayasuriya Kah & Co, vide the letter dated 13 November 2007 (exh B, pp 30–31) informed the plaintiff that SCB cannot accede to the request to waive the interest charged during the bankruptcy period as they are entitled to do so and that the property was fixed for auction by the ACLR on 19 December 2007 pursuant to default by the plaintiff for his housing loan. However on 17 December 2007 (exh B p 38), Messrs Jayasuriya Kah & Co informed the plaintiff that the defendant is willing to postpone the auction provided that plaintiff would give a written undertaking that he would unconditionally agree to pay the full redemption sum. The plaintiff then agreed to do so but on the allegation that he had agreed subject only if the defendant had the legal right to

charge the amount as contained in the redemption statement.

ISSUES

(a) Whether the plaintiff by reason of the plaintiff and/or plaintiff's solicitors' conduct is estopped from disputing or challenging the validity of the redemption sum paid to the defendant?;

(b) whether the defendant is entitled to charge interests on the plaintiff's housing loan during his bankruptcy from 5 August 1999–3 July 2007?; and

(c) whether the defendant was responsible for the delay in the processing of the loan to Chua Hui Yong?

Whether the plaintiff by reason of the plaintiff and/or plaintiff's solicitors' conduct is stopped from disputing or challenging the validity of the redemption sum paid to the defendant?

[6] The submission of learned counsel for the defendant is a straightforward one and is premised on the established principle of estoppel where in *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331; [1995] 4 CLJ 283, His Lordship Gopal Sri Ram JCA (as His Lordship was then) explains it as follows:

> The width of the doctrine has been summed up by Lord Denning in the *Amalgamated Investment* case (at p 122) as follows:
>
> > The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. But it has become overloaded with cases. That is why I have not gone through them all in this judgment. It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: estoppel is only a rule of evidence, estoppel cannot give rise to a cause of action, estoppel cannot do away with the need for consideration, and so forth. All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying assumption either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[7] Applying the above principle, learned counsel relies on the following

conducts by the plaintiff:

(i) Issuance of the letter of undertaking dated 17 December 2007 resulting in the postponement of the auction

[8] This letter was prompted by the defendant's pending foreclosure action and the defendant by a letter dated 17 December 2007 had informed the plaintiff's solicitors that the defendant would only postpone the auction if the plaintiff would give a written undertaking that he would unconditionally pay the defendant the full redemption sum payable without any deductions whatsoever. The plaintiff in response to that letter gave that written undertaking.

[9] The defendant's letter dated 17 December 2007 (exh B, p 38) reads as follows:

A

B

C

D

E

F

G

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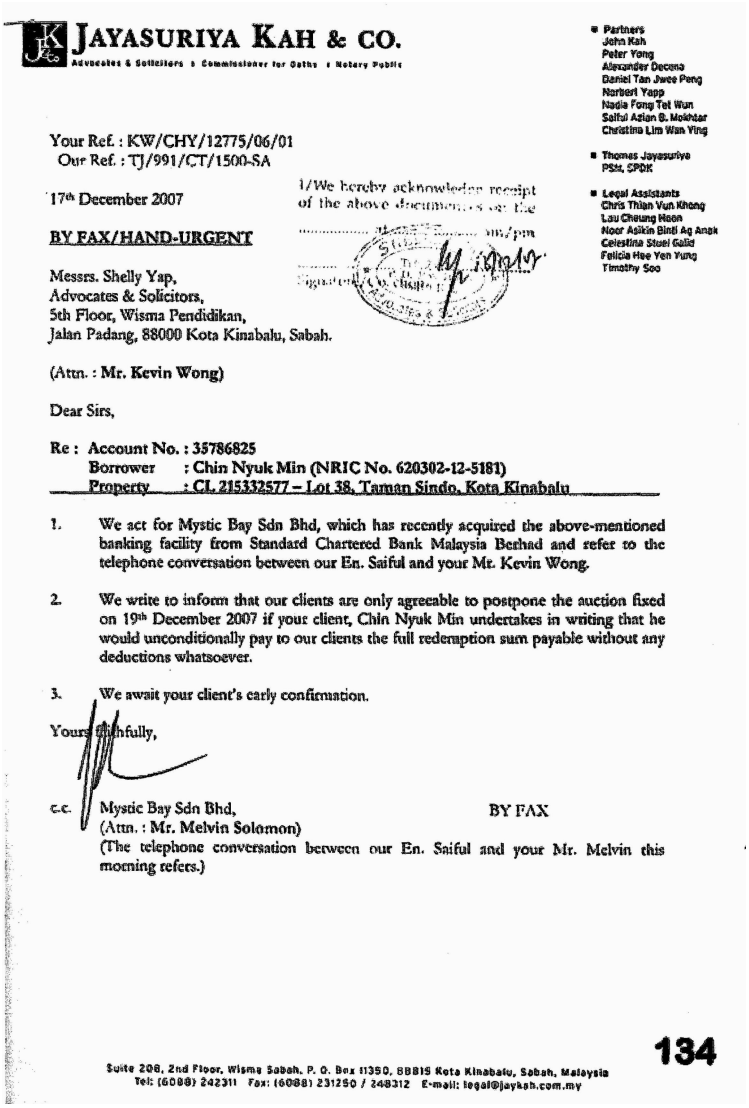
I



JAYASURIYA KAH & CO.
Advocates & Solicitors • Commissioner for Oaths • Notary Public

- Partners
  John Kah
  Peter Yong
  Alexander Decena
  Daniel Tan Jwee Peng
  Norbert Yapp
  Nadia Fong Tet Wun
  Saiful Azlan B. Mokhtar
  Christina Lim Wan Ying
- Thomas Jayasuriya
  PSM, SPDK
- Legal Assistants
  Chris Thian Vun Khong
  Lau Cheung Hoon
  Noor Aslkin Binti Ag Anak
  Celestina Stuel Galis
  Felicia Hee Yen Yung
  Timothy Soo

Your Ref. : KW/CHY/12775/06/01
Our Ref. : TJ/991/CT/1500-SA

17th December 2007

I/We hereby acknowledge receipt of the above documents on the ..... am/pm

BY FAX/HAND-URGENT

Messrs. Shelly Yap,
Advocates & Solicitors,
5th Floor, Wisma Pendidikan,
Jalan Padang, 88000 Kota Kinabalu, Sabah.

(Attn. : **Mr. Kevin Wong**)

Dear Sirs,

Re : Account No. : 35786825
Borrower : Chin Nyuk Min (NRIC No. 620302-12-5181)
Property : CL 215332577 – Lot 38, Taman Sindo, Kota Kinabalu

1. We act for Mystic Bay Sdn Bhd, which has recently acquired the above-mentioned banking facility from Standard Chartered Bank Malaysia Berhad and refer to the telephone conversation between our En. Saiful and your Mr. Kevin Wong.

2. We write to inform that our clients are only agreeable to postpone the auction fixed on 19th December 2007 if your client, Chin Nyuk Min undertakes in writing that he would unconditionally pay to our clients the full redemption sum payable without any deductions whatsoever.

3. We await your client's early confirmation.

Yours faithfully,

c.c. Mystic Bay Sdn Bhd, BY FAX
(Attn. : **Mr. Melvin Solomon**)
(The telephone conversation between our En. Saiful and your Mr. Melvin this morning refers.)

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Suite 206, 2nd Floor, Wisma Sabah, P. O. Box 11350, 88815 Kota Kinabalu, Sabah, Malaysia
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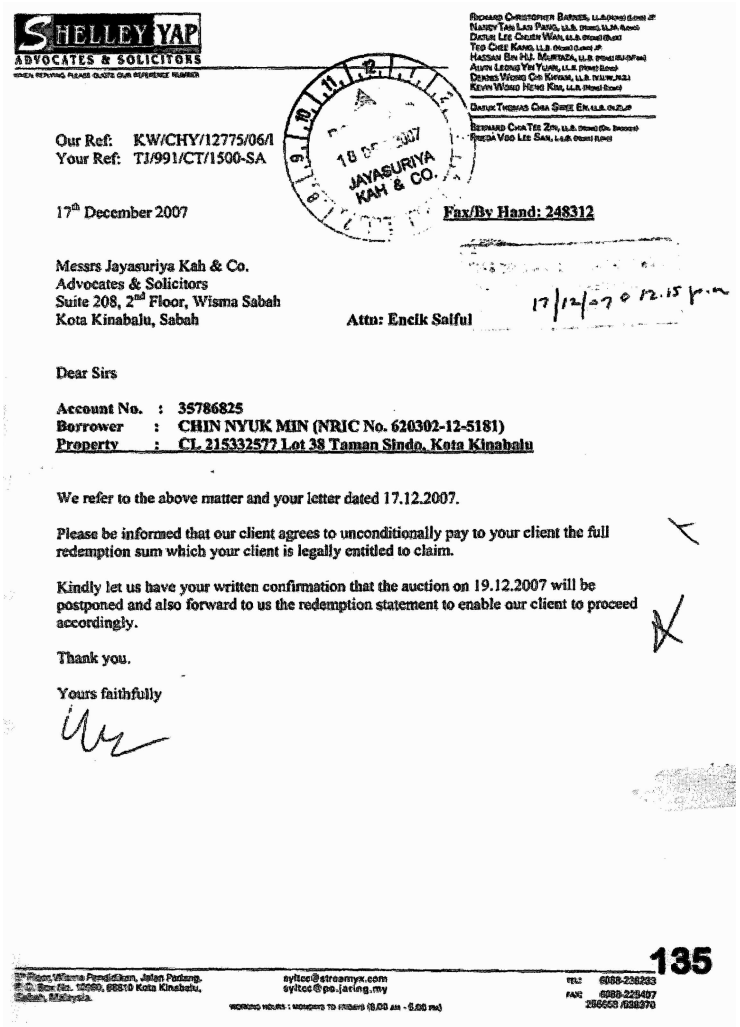
[10] The plaintiff's response also dated 17 December 2007 reads as follows:



SHELLEY YAP
ADVOCATES & SOLICITORS

JAYASURIYA KAH & CO.

Our Ref: KW/CHY/12775/06/I
Your Ref: TJ/991/CT/1500-SA

17th December 2007

Fax/By Hand: 248312

Messrs Jayasuriya Kah & Co.
Advocates & Solicitors
Suite 208, 2nd Floor, Wisma Sabah
Kota Kinabalu, Sabah

Attn: Encik Saiful

17/12/07 @ 12.15 p.m.

Dear Sirs

Account No. : 35786825
Borrower : CHIN NYUK MIN (NRIC No. 620302-12-5181)
Property : CL 215332572 Lot 38 Taman Sindo, Kota Kinabalu

We refer to the above matter and your letter dated 17.12.2007.

Please be informed that our client agrees to unconditionally pay to your client the full redemption sum which your client is legally entitled to claim.

Kindly let us have your written confirmation that the auction on 19.12.2007 will be postponed and also forward to us the redemption statement to enable our client to proceed accordingly.

Thank you.

Yours faithfully

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[11] Based on the two letters, it is the submission of the defendant that the parties had reached an 'amicable settlement' in which in consideration of the defendant agreeing to postpone the auction fixed on 19 December 2007, the plaintiff undertook to pay the redemption sum in full to the defendant. Hence it would be unfair for the plaintiff now to renege from the amicable settlement in which he had obtained a benefit.

(ii) The plaintiff never disputed the redemption statements issued by the defendant

[12] Learned counsel for the defendant submits that since the plaintiff did

not dispute the contents or quantum of both the redemption statements dated 4 March 2009 and 17 March 2009 (exh A, pp 166 and 1670) when the same were issued, he is bound by them. Learned counsel also refers the court to the case of *Ong & Co Pte Ltd v Foo Sae Heng* [1990] 2 MLJ 85, where the court held that:

> By not objecting to the documents sent to him, he had effectively affirmed that the transactions were properly carried out. He was estopped from denying the same.

(iii) Requesting for a discount in the redemption sum and paying the discounted redemption sum to the defendant

[13] By a letter dated 12 March 2009 (exh A p 169), the plaintiff's solicitors had requested for a reduction of the redemption sum and in response the defendant by a reply dated 17 March 2009 (exh A p 170), the defendant agreed to a discounted redemption sum of RM245,000 payable on or before 17 June 2009. That sum of RM245,000 was duly paid to the defendant. I have no problem in accepting the submission of the defendant that the plaintiff is estopped to raise what he is raising now if there is no s 8(2A) Bankruptcy Act which reads as follows:

> Notwithstand ofing sub-section (2), no secured creditor shall be entitled to any interest in respect of his debt after the making of a receiving order if he does not realize his security within six months from the date of the receiving order

[14] The existence of s 8(2A) of the Bankruptcy Act gives rise to the legal issue of whether estoppel is applicable in this case. Before I could answer that, I must answer issue (b) which I now deal with.

Whether the defendant is entitled to charge interests on the plaintiff's housing loan during his bankruptcy from 5 August 1999 –3 July 2007 in view of s 8(2A) of the Bankruptcy Act 1967?

[15] Learned counsel for the plaintiff submits that s 8(2A)of the Bankruptcy Act is crystal clear in that only six months of agreed interest can be charged on loan secured by property if the debtor is a bankrupt. Learned counsel refers the court the case of *United Overseas Bank (M) Sdn Bhd v Mok Hue Huan & Anor* [2010] 7 MLJ 293) (see pp 3–15, PBOA), where the learned judge held as follows:

I am in full agreement with the submission of the learned counsel for the defendant that s 8(2A) of the Act is a 'statutory clamp'on secured creditors prohibiting them from claiming any further interest on the debt after the statutory period. There is no exception to the said section.

Section 8(2A) came into force on 17 July 1992. Therefore, by statute law, lenders/charges are required by law to realise their security swiftly within six months of the adjudication order or winding up order failing which they cannot claim any interest whatsoever on the debt.

My view above is fortified by the Hansard of Parliament who had on 14 May 1992 and 2 June 1992 respectively debated the Bankruptcy (Amendment) Bill 1992:

Seterusnya pindaan adalah juga dicadangkan dibuat kepada Seksyen 8 bagi memperuntukkan bahawa tiada apa-apa bunga boleh dibayar kepada pemiutang bercagar jika sekiranya pemiutang tersebut gagal menghasilkan cagarannya dalam tempoh 6 bulan dari tarikh perintah penerimaan dibuat. Rasionalnya ialah pada amalan biasa dan berdasarkan peruntukkan yang sedia ada, didapati segolongan pemiutang bercagar mengambil masa yang terlalu lama untuk menghasilkan harta tersebut. Manakala, bunga yang perlu dibayar oleh penghutang berterusan sehinggalah jualan dilaksanakan. Perbuatan sedemikian adalah tidak adil kepada pemiutang yang tidak bercagar dan juga kepada penghutang.

In my considered opinion, the rationale behind s 8(2A) of the Act is very clear and unambiguous. The section caps the maximum interest that can be claimed by a secured creditor from whatever source. This section was introduced by Parliament to prevent secured creditors from claiming unlimited interest on the debt either from the security or from the guarantors or sureties. It prevents the secured creditors from fleecing the guarantor's or the bankrupt's or wound up company's securities if they do not realise the securities within the statutory period and if the security of the bankrupt or the wound up company is insufficient to pay the secured creditor as at the date of AORO or the winding up.

If this is not the purpose and intent for which s 8(2A) of the Act was enacted by the Parliament, then, all guarantors will be at the mercy of lenders/charges, who can take their own sweet time to realise their security. It will be like drawing money from a bottomless well and lenders can reap hefty rewards in the form of interest at infinitum.

The case in point is *OCBC Bank (Malaysia) Bhd v Tan Eng Kee and another application*. In this case, the effect of s 8(2A) of the Act came to be determined before the High Court of Melaka where the official assignee, acting for the defendant/charger, who had been made a bankrupt, objected to the plaintiff/chargee's attempt to recover contractual interest in respect of the former's debt incurred after the making of the receiving order. The contention of the official assignee was, while he would not object to the application for an order for sale of the property charged to the plaintiff/charge as security, he could not agree to the claim of interest in respect of the debt made in the application as the plaintiff/chargee failed to realise the property within six months from the date of the receiving order. Therefore, the plaintiff/chargee's claim on contractual interest should be restricted up to the date of the receiving order.

Prior to the enactment of s 8(2A) of the Act, the Malaysian courts had consistently taken the view that a secured creditor who choose not to prove in bankruptcy of the debtor should not be deprived of the interest which the contract allows. However, in the light of the amendment made to s 8 of the Act, incorporating a new sub-2A, which came into force on 17 July 1992, this approach is no longer tenable.

The court in this instant case was in full agreement with the official assignee's contention. The previous position adopted by the courts vis-a-vis full claim on contractual interest was no longer applicable in view of the clear and unambiguous terms in s 8(2A) of the Act. Consequently, the court held, as the plaintiff/chargee had failed to realise the property within six months from the date of the receiving order, the plaintiff/chargee could not be allowed to claim the full contractual interest post the date of the receiving order. In this regard, the court construed the realisation of the security as the act of receiving payment of the proceeds from the successful bidder pursuant to the order for sale.

The above decisions effectively restricts secured creditor's claims for contractual interest on outstanding debts against debtors, who have a receiving order against them, to the date the order is made if they fail to receive proceeds of sale of the security within the stipulated six months.

In the end, Low Hop Bing J (as he then was) ordered that the charge was entitled to only RM4,803,362.60 being the amount due as a the AORO (4 October 2001) and not RM5,212,816.01 which was the amount as at the order for sale (23 January 2003).

[16] Opposing that view, learned counsel for the defendant submits that s 8(2A) does not apply when the debtor's bankruptcy had been discharged. In support of his contention, learned counsel for the defendants refers the court to the case of *Chong Kon Yon v MBf Finance Bhd* [1997] 2 MLJ 333; [1997] 1 CLJ 7 where the Court of Appeal referred with approval to the decision in *Allen v Thorn Electrical Industries Ltd; Griffin v Metropolitan Police District Receiver* [1968] 1 QB 487 as follows:

Lord Denning, MR had stated …

At pp 503–504, he said:

If I were wrong in this view, I am clear that, at any rate, the requirement in the statute is ambiguous and uncertain: in which case the rights under the contract must prevail. No man's contractual rights are to be taken away on an ambiguity in a statute: nor is an employer to be penalised on an ambiguity.

At p 505, Danckwerts LJ said:

These statutory provisions are penal and are designed to interfere with rights of contract and the pre-existing legal position of free citizens of this country. Well established principles, therefore, apply to the situation. Existing legal rights are not to be taken away except by clear words in the statute. If two constructions are possible, the construction which produces unreason and hardship is to be avoided, and the construction which interferes with the legal rights of the subject to a lesser extent and produces the less hardship is to be preferred.

Then, at pp 508–509, Winn LJ said:

> … On the contrary, I think the right view is, and as I understand it always has been, that in such a case of ambiguity, it is resolved in such a way as to make the statute less onerous for the general public and so as to cause less interference, than the more stringent sense would with such rights and liberties as existing contractual obligations.

[17] Hence, learned counsel for the defendant's submission is that s 8(2A) of the Bankruptcy Act cannot take away the contractual rights of the defendant to charge the agreed interest.

[18] After giving due consideration to both views, I am more inclined to agree with the views expressed in *United Overseas Bank (M) Sdn Bhd*. The ramifications of bankruptcy are serious and to ensure that a bankrupt cannot be allowed to be further burdened with and taken advantage off by secured creditors by taking their sweet time to realise the secured properties, Parliament has seen fit through s 8(2A) to require the secured creditor to realise the security no later than six months, failing which no agreed interests will be chargeable. In the case at hand, the plaintiff had been a bankrupt since 5 August 1999 until 3 July 2007. There is no explanation by the defendant as to why the plaintiff's secured property had not been foreclosed for some seven and half years. This 'statutory cap' of six months interest, to borrow a phrase, remains despite the fact that the bankruptcy of the plaintiff had been discharged at the time when the secured property is being realised or sold. In a nutshell, the defendant is prohibited from charging interests on the plaintiff's loan during the bankruptcy period.

[19] With that, this brings me back to this issue of:

Whether the principle of estoppel can apply in light of s 8(2A) of the Bankruptcy Act 1967?

[20] There is little doubt that s 8(2A) was introduced as a social piece of legislation premised on the public policy of protecting people in bankruptcy. It is also a fundamental principle of law that the concept of estoppel is a principle of justice and of equity. In my view, to allow the defendant to impose interests during the bankruptcy period is neither just nor fair in view of s 8(2A) of the Bankruptcy Act. In any event, estoppel cannot prevail against a statute especially when s 8(2A) was introduced to protect people in bankruptcy. For reasons stated above, I find that the defendant is barred from charging interests during the bankruptcy period.

[21] That being the case, what then is the amount which should be refunded

to the plaintiff? Learned counsel for the defendant does not dispute the figures stated in the statement of account produced by SCBMB (refer to pp 113–128 of exh 'B'). As for the 'admin fees', I agree with learned counsel for the defendant that it could be charged for the simple reason that s 8(2A) merely prohibits the charging of interest. In any event, the 'admin fees' has no correlation with the agreed interests under the loan. Further I am of the view that the defendant is entitled to charge administrative fees for keeping the account of the loan. Accordingly, the plaintiff is to be refunded by the defendant the following sums:

(a) Interest Debit: RM54,646.41;

(b) Late Charge Debit: RM57,951.41

Whether the defendant was responsible for the delay in the processing of the loan to Chua Hui Yong?

[22] The delayed period according to the plaintiff is from 20 August 2007–17 March 2009 which is the date of the first incorrect redemption statement to the date of the last incorrect redemption statement. Learned counsel for the plaintiff had in my view summarised the chronology of events of the delayed period and for convenience I produce the same for clarity:

Date	Page (Exhibit B)	Description of Correspondence	Particulars of Delay
20.08.2007	27	First wrong redemption statement issued	
02.10.2007	29	Second wrong redemption statement issued	Wrong redemption statement
13.11.2007	30–31	Defendant's rejection of the Plaintiffs request for the correct redemption sum	
11.12.2007	35	Plaintiff's further request for the correct redemption sum	
13.12.2007	36	Defendant's rejection of the Plaintiff's request for the correct redemption sum	Wrong redemption statements
17.12.2007	40	First request from Plaintiff for original Title Deed and duly executed Satisfaction of Charge ('relevant documents') for the transfer of the Property	Incomplete documents for registration of transfer and charge

02.01.2008	41	Plaintiff's request for an up to date redemption statement	
26.02.2008	42–44	Defendant forwards another wrong redemption statement	
27.02.2008	45	Plaintiff sent a reminder to forward the original title deed	
14.03.2008	78	Plaintiff sent a reminder the Defendant to promptly forward the Title Deed and Letter to Transfer and Consent	Incomplete documents for registration of transfer and charge
01.04.2008	79	Plaintiff sent another reminder to Defendant to promptly forward the Title Deed and Letter to Transfer and Consent	
17.04.2008	80–83	Defendant forwarded the Title Deed, Letter of Undertaking to PBB and Letter of Consent to the Central Land Registry	
17.04.2008	84	Plaintiff informed Defendant that the Defendant's Letter of Consent was rejected by the Sabah Central Land Registry as the signature of Sagayanathan AIL Mariathas purportedly on behalf of the Defendant was improper as it was not signed by the registered attorney of the Defendant.	
21.05.2008	85	Plaintiff sent a reminder to Defendant to promptly forward a correct Letter of Consent	
24.06.2008	86	Defendant forwarded a copy of the Limited Power of Attorney duly noted in Central Land Registry on 16.06.2008 appointing Sagayanathan A/L as the Defendant's attorney.	Wrong redemption statement
10.12.2008, 11.12.2008 & 16.12.2008	88–90	Plaintiff informed the Defendant and the Defendant's Solicitors respectively that the Central Land Registry was unable to process the registration of the transfer, charge and related documents due to the Central Land Office's query on the Vesting Order dated 20.11.2007.	

20.02.2009	92	The Defendants were informed by Plaintiff's Solicitors that the memorial numbers for the Vesting Order, Memorandum of Transfer and Memorandum of Charge were finally allotted and requested afresh redemption statement from the Defendants as the last redemption statement had expired on 06.04.02008.	
04.03.2009	93–95	A fresh redemption statement was issued with the particulars as follows:- (i) with redemption sum of RM257,598.20payable by 31.03.2009. (ii) with redemption sum of RM 259, 532.00payable by 30.04.2009. (iii) with redemption sum of RM261,530.26 payable by 31.05.2009	
12.03.2009	96	Plaintiff's Solicitors again requested for the reduction for the redemption sum.	
17.03.2009	97	The Defendant adjusted the redemption sum to RM24S, 000.00 payable by 17.06.2009.	Wrong redemption statement

[23] According to the statement of account of the defendant, the amount of interests charged was for 547 days and the amount was as follows:

Page No. (Exhibit B)	Description	Amount (RM)
103–104	Interest (highlighted in blue)	4,287.85
103–105	Late payment charges (highlighted in green)	27,440.49

[24] Learned counsel for the defendant submits that the plaintiff ought to take some blame in disputing the redemption statement. With respect, the plaintiff was fully entitled to dispute the redemption amount as that is his right. He cannot be asked to pay what is not lawfully due to the defendant. Learned counsel for the defendant also submits that the delay was due to factors beyond their control and these are the registration of the defendant's power of attorney in West Malaysia and the three problems faced by the plaintiff's solicitors which were listed in the para 23 of PW2-A would not be issues if the defendant was an ordinary licensed bank and the need to prepare a vesting certificate which is not a common requirement. Again I agree with learned counsel for the plaintiff that these issues which have nothing whatsoever to do with the plaintiff cannot become a burden to the plaintiff. The defendant is a corporate

entity and must be taken to be aware of their responsibility when they took over the loan from Standard Chartered Bank. Accordingly I adopt the timeline of 90 days as suggested by the plaintiff and hence he is entitled to the following late interest and payment charges:

(a)	Interest:	RM4,287.85 / 547 days = RM7.84 per day RM7.84 x (547-90 days) = **RM3,582.88**
(b)	Late payment charges:	RM27.440.49 / 547 days = RM50.17per day RM50.17 x (547-90 days) = **RM22,927.69**

CONCLUSION

[25] For reasons stated above, for interests and late charges during the bankruptcy period, I order that the defendant refund to the plaintiff the following:

(a) Interest debit: RM54,646.41

(b) Late charge debit: RM57,951.41

[26] As for the late interest and charges during the delay period, I order that the defendant refund to the plaintiff the following:

(a) Interest: RM3,582.88

(b) Late payment charges: RM22,927.69

[27] As for costs I order the sum of RM5,000 as in my view this claim should have been litigated in the sessions court. The reason why this matter is before this court is that the plaintiff sought for a declaration. With respect, the plaintiff's learned counsel should have sought for a refund of the overpayment by virtue of s 8(2A) of the Bankruptcy Act in the sessions court which is fully competent to do and interpret s 8(2A) of the Bankruptcy Act as was done by this court.

Plaintiff's claim for refund allowed with costs of RM5,000.

Reported by Kohila Nesan